

# Interested in Equity Capital Raising?

A roadmap to SEC regulatory framework

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U.S. Securities and Exchange Commission

**Office of the Advocate for  
Small Business Capital Formation**

# Roadmap

-  **DEMYSTIFY THE RULES**
-  **UNDERSTAND COMMON PATHWAYS**
-  **IDENTIFY TYPES OF INVESTORS**
-  **INVEST/RAISE THROUGH FUNDS**





# DEMYSTIFY THE RULES



# 🔍 Securities Laws in a Nutshell

Under the federal securities laws, every **offer** or **sale** of securities, must be either registered with the SEC or conducted under an exempt offering

## Registered Public Offerings

- Initial public offerings (IPOs)
- Special Purpose Acquisition Companies
- Direct Listings
- Secondary registered offerings

OR

- Rule 506(b) Private Placements
- Rule 506(c) General Solicitation Offerings
- Rule 504 Limited Offerings
- Regulation Crowdfunding Offerings
- Intrastate Offerings
- Regulation A Offerings

## Exempt Offerings



# How are the capital raising pathways being used?



# 🔍 Resources and Tools

➔ LEARN MORE

[www.sec.gov/capitalraising](http://www.sec.gov/capitalraising)



Explore SEC resources to help equip you with the tools you need to raise capital.

 <p><b>Navigate Your Options</b> Explore what regulatory pathways you could use to raise capital from investors.</p>	 <p><b>Capital Trends</b> Survey where capital is being raised across the country with interactive maps</p>	 <p><b>Glossary of Terms</b> Cut through the jargon and learn the language of capital raising.</p>
 <p><b>Building Blocks</b> Explore the fundamentals of capital raising.</p>	 <p><b>Additional Resources</b> Check out resources to help small businesses navigate raising capital.</p>	 <p><b>Stay Connected</b> Join our email list to get updates on new content and resources.</p>



# Resources and Tools



**BUILDING BLOCKS**

Explore the fundamentals of capital raising with the Office of the Advocate for Small Business Capital Formation.

 <p>What pathways are available to raise capital from investors?</p>	 <p>What is the role of accredited investors?</p>	 <p>What is general solicitation?</p>
 <p>How do private funds provide capital to early-stage companies?</p>	 <p>How do I know when I am ready to raise capital from investors?</p>	 <p>What different types of securities are issued to startup investors?</p>





# UNDERSTAND COMMON PATHWAYS



# Pathways to Capital Raising



**Rule 506(b) Private Placements** allow companies to raise unlimited capital from investors with whom the company has a relationship and who meet certain wealth thresholds or have certain professional credentials. A company cannot use general solicitation in a 506(b) private placement.



**Rule 506(c) General Solicitation Offerings** allow companies to raise unlimited capital by broadly soliciting investors who meet certain wealth thresholds or have certain professional credentials.



**Rule 504 Limited Offerings** allow companies to raise up to \$10 million in a 12-month period, in many cases from investors with whom the company has a relationship.



# Pathways to Capital Raising



**Regulation Crowdfunding Offerings** allow eligible companies to raise up to \$5 million in investment capital in a 12-month period from investors online via a registered funding portal.



**Intrastate Offerings** allow companies to raise capital within a single state according to state law. Many states limit the offering to between \$1 million to \$5 million in a 12-month period.



**Regulation A Offerings** (sometimes called a “mini-IPO”) allow eligible companies to raise up to \$20 million in a 12-month period in a Tier 1 offering and up to \$75 million in a 12-month period in a Tier 2 offering through a process similar to, but less extensive than, a registered offering.



**Initial public offerings (IPOs)** provide an initial pathway for companies to raise unlimited capital from the general public through a registered offering. After its IPO, the company will be a public company with ongoing public reporting requirements.



# General Solicitation: What's the deal?

A solicitation that conditions the market for an offering of securities is generally viewed as a **general solicitation** that is marketing the securities. Examples:



Newspaper and  
magazine  
advertisements

Unrestricted public  
websites



Television and radio  
broadcasts



Seminars (excluding  
demo days)

**Why does this matter?** Depending upon which regulatory pathway a company chooses to raise capital, the company may be limited in how it can connect with potential investors. For example, the most commonly used offering exemption under the federal securities laws — Rule 506(b) of Regulation D — prohibits the use of general solicitation to market the securities.



# How can I avoid general solicitation?

Conduct an offering that is limited to investors with whom the company (or its broker dealer or investment adviser) has a **pre-existing, substantive** relationship.

## "Pre-existing"

Formed *before* the start of the offering

or

Established through a broker-dealer or investment adviser *prior to* that investment professional's participation in the offering

## "Substantive"

Formed when the entity offering securities (i.e., the company or its broker-dealer or investment adviser) has sufficient information to evaluate and evaluates a potential investor's status as an accredited investor



# What about demo days?

Recent rule changes clarify how companies can pitch to potential investors at **qualifying demo** day events without being considered a general solicitation.

Key criteria include:

- **Sponsor** of the event is a college, university, state or local government, nonprofit organization, angel investor group, incubator, or accelerator
- Sponsor is limited in its **role** outside of serving as the event host
- **Advertising** for the event does not reference any particular securities offering
- **Information** about the offering shared during the event is limited to notification of planned or ongoing offering, type and amount of securities being offered, intended use of the proceeds, and unsubscribed amount





# IDENTIFY TYPES OF INVESTORS



# What is the role of accredited investors?

Many of the offering exemptions under the federal securities laws limit participation to accredited investors or contain restrictions on participation by non-accredited investors.

Only Accredited Investors Allowed	Restrictions for Non-Accredited Investors	No Restrictions for Non-Accredited Investors
 <ul style="list-style-type: none"><li>• Rule 506(c) General Solicitation Offerings</li></ul>	 <ul style="list-style-type: none"><li>• Rule 506(b) Private Placements</li><li>• Regulation A Offerings</li><li>• Regulation Crowdfunding</li></ul>	 <ul style="list-style-type: none"><li>• Rule 504 Limited Offerings</li><li>• Intrastate Offerings</li><li>• Public Offerings</li></ul>



# How can individuals qualify as accredited?

Individuals may qualify as accredited investors based on wealth and income thresholds, as well as other measures of financial sophistication.



## Financial Criteria:

- Net worth over \$1 million, excluding primary residence (individually or with spouse or partner)
- Income over \$200,000 (individually) or \$300,000 (with spouse or partner) in each of the prior two years, and reasonably expects the same for the current year



## Professional Criteria:

- Investment professionals in good standing holding the general securities representative license (Series 7), the investment adviser representative license (Series 65), or the private securities offerings representative license (Series 82)
- Directors, executive officers, or general partners (GP) of the company selling the securities (or of a GP of that company)
- Any “family client” of a “family office” that qualifies as an accredited investor
- For investments in a private fund, “knowledgeable employees” of the fund



# How can entities qualify as accredited?



Entities owning investments in excess of \$5 million



The following entities with assets in excess of \$5 million: corporations, partnerships, LLCs, trusts, 501(c)(3) organizations, employee benefit plans, “family office” and any “family client” of that office



Entities where all equity owners are accredited investors



Investment advisers (SEC- or state-registered or exempt reporting advisers) and SEC-registered broker-dealers



A bank, savings and loan association, insurance company, registered investment company, business development company, or small business investment company or rural business investment company

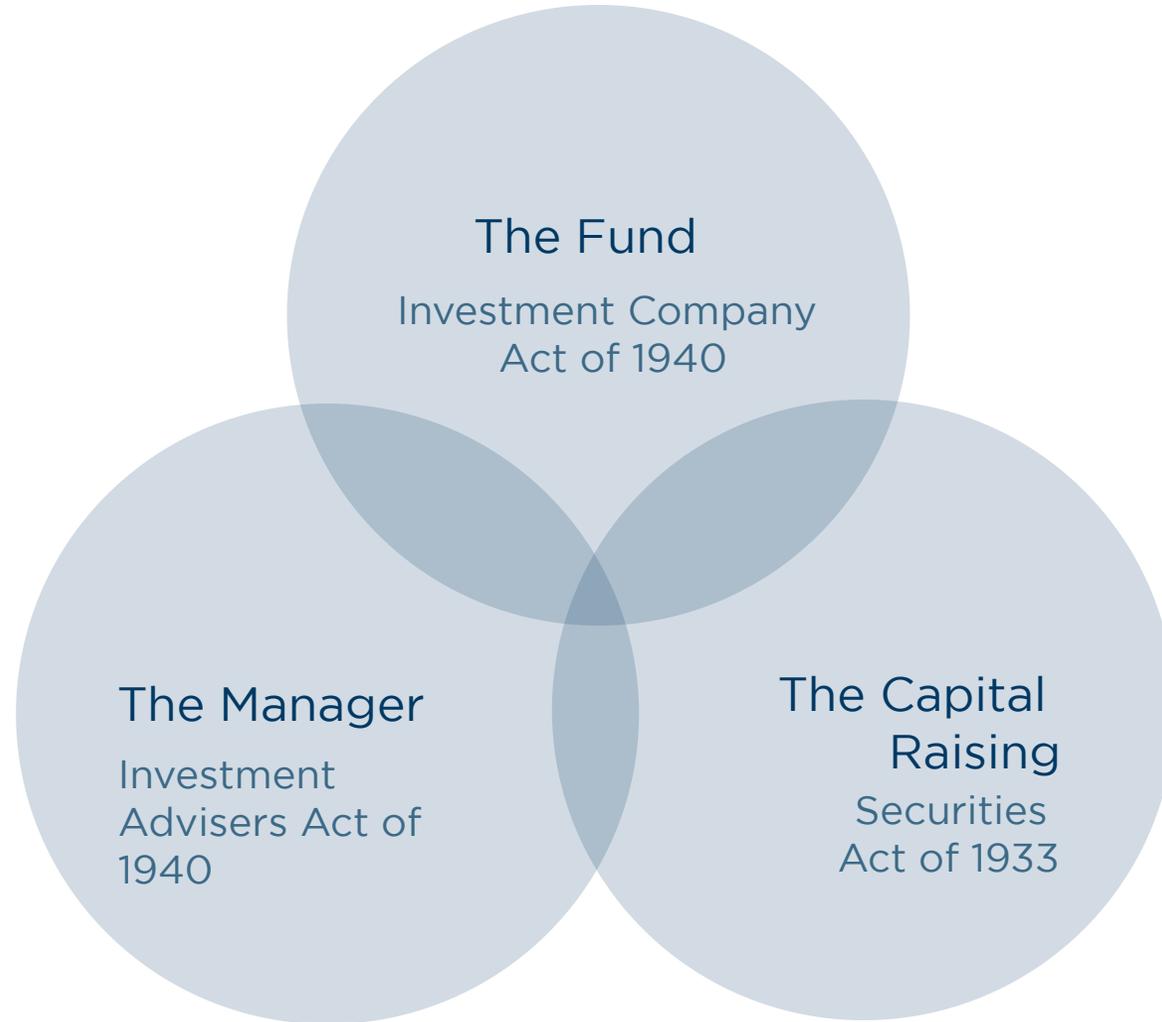




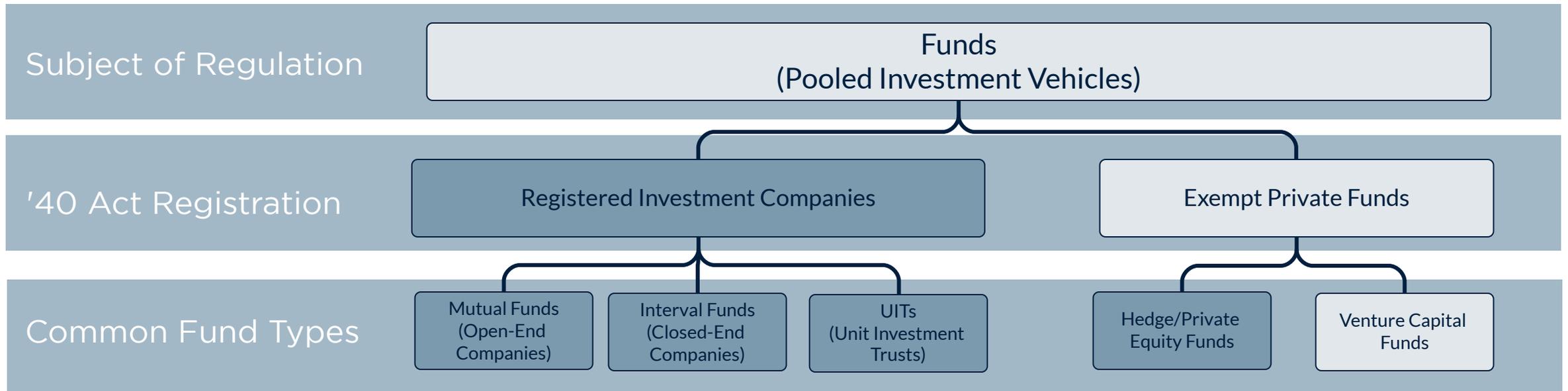
# RAISE/INVEST THROUGH FUNDS



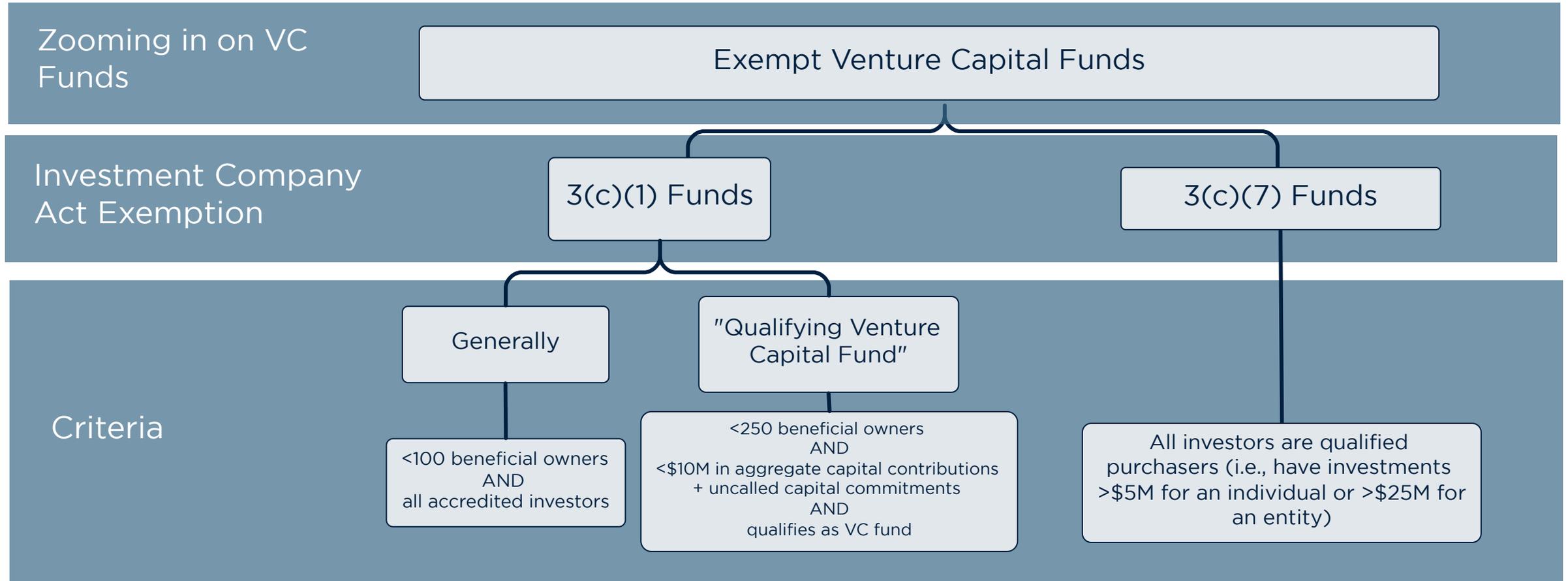
# ☑ Key Categories of Fund Regulation



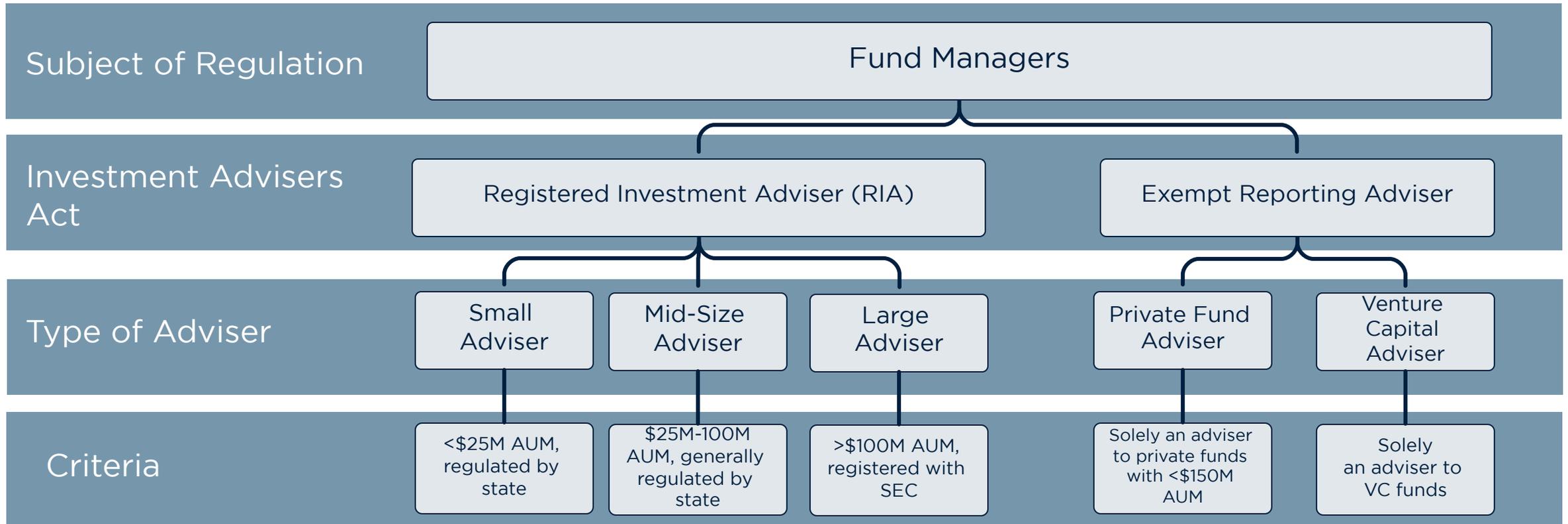
# ✓ 10,000 Foot Overview: Types of Funds



# ✓ Fund Exemptions from Investment Company Act of 1940



# ✓ 10,000 Foot Overview: Fund Manager Registration



# ✓ Exempt Venture Capital Fund Adviser Criteria

1. Represents to investors that it pursues a venture capital strategy;
2. Generally limits redemption rights;
3. Holds no more than 20% of the amount of the fund's aggregate capital contributions and uncalled capital commitments in **non-qualifying investments** (often referred to as the 20% non-qualifying basket); and
4. Limits the use of leverage

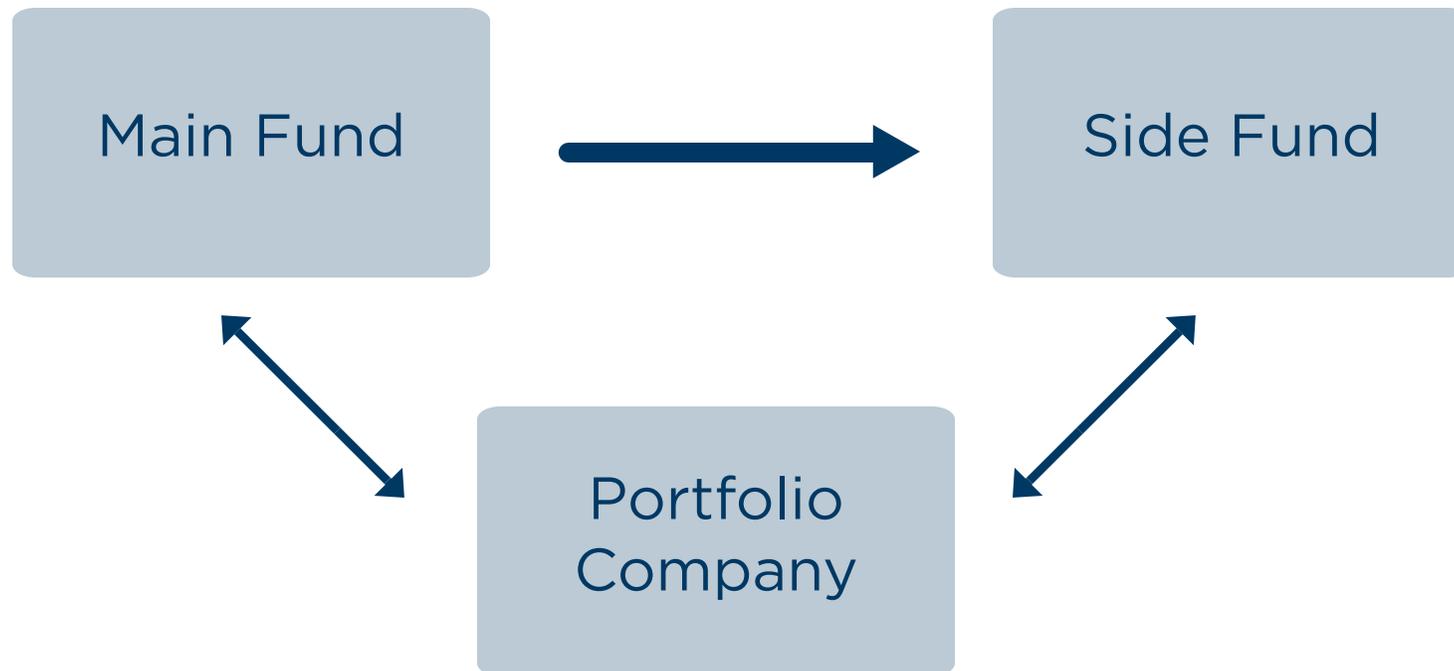


“Qualifying investments” generally means direct equity investments in private companies.

Generally excludes: pure debt instruments, secondary shares, public issuances, fund of fund investments, and some digital assets.



# ✓ Exempt Venture Capital Fund Adviser Criteria: Guidance on Qualifying Investments



For more information, see: <https://www.sec.gov/divisions/investment/guidance/im-guidance-2013-13.pdf>



ANNUAL REPORT FOR FISCAL YEAR 2021

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U.S. SECURITIES AND EXCHANGE COMMISSION

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[smallbusiness@sec.gov](mailto:smallbusiness@sec.gov)



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